

HEALTH AND COMMUNITY SUPPORTS CONTRACT CONTRACT INTERPRETATION BULLETIN

for CY 2003 Contract

CIB # 2003-3: Member Use of Personal Resources¹

Issued: November 3, 2003

CONTRACT SECTIONS AFFECTED

HCS Contract Sec. III.A. *Provision of Services in the LTC Benefit Package*
HCS Contract Addendum I. *Definitions*

STATEMENT OF POLICY

In the existing waivers family members or clients may decide to use personal resources to enhance services or to make gifts to a care provider. In the Family Care managed care environment, the department and the CMOs must take special care to assure such use of personal resources is not in conflict with Medicaid managed care policies limiting the CMO's authority to accept (or to allow subcontract providers to accept) any direct payment from the member. Consistent with federal requirements for prepaid health plans, Family Care strictly prohibits billing members for any services included in the long-term care benefit package and necessary to achieve the member's individual outcomes. Any use of personal resources to enhance services or make a gift to a care provider must be wholly voluntary on the part of the consumer. The purpose of this Contract Interpretation Bulletin is to identify limited circumstances under which a CMO or the CMO's providers may accept personal resources from a member or the member's family or significant others, and to describe required procedures for these situations.

AUTHORITY FOR CONTRACT PROVISIONS

Family Care operates pursuant to the managed care contract requirements of the Centers for Medicare & Medicaid Services (CMS) described in 42 CFR 438. Federal and State regulations limit client financial obligations for services. Any client obligation must be determined consistent with 42CFR447.50 Cost Sharing.

CONTRACT INTERPRETATION

The Health and Community Supports contract strictly prohibits billing members for any services in the long-term care benefit package that are necessary to achieve the member's individual outcomes. A CMO, CMO provider, or the State Medicaid program may only accept personal resources, in excess of cost share, from a member or the member's family or significant others, if such acceptance is consistent with the following Personal Resources Policy:

¹ An earlier version of this CIB was released on May 8, 2001 under # 2001-2. This CIB was never incorporated into the HCS contract.

Personal Resources Policy

There are three situations in which a CMO or its providers, or the State Medicaid program may accept personal resources from a member or the member's family or significant others.

1. **Purchase of enhanced services** -- The voluntary choice of a member or the member's family or significant others to purchase at fair market value, a service either (a) not included in the Family Care benefit and, for Medicaid-eligible members, not covered by Medicaid, or (b) additional services included in the Family Care benefit that are not necessary to achieve member outcomes as agreed upon by the CMO and the member (as documented in the ISP/MCP). Enhanced services may be purchased from the CMO, a CMO provider or an individual or agency associated with the CMO or its providers only when the procedures for ensuring that the purchase is voluntary that are outlined in this CIB are followed and documented in the member's case record. The member or his/her family has the right, at any time, to revoke the consent for payment.
2. **Gift (Transfer of Assets)** -- The voluntary choice of a member or the member's family or significant others to transfer cash or something else of value to the CMO and/or provider of service as a recognition of or expression of gratitude for services to the member. (This type of transfer of assets may be considered divestment of an asset and could lead to loss of Medicaid entitlement.)
 - a. "Gift" means something of value voluntarily transferred by one person or entity to another person or entity without compensation.
 - b. "Something of value" means cash or some other existing identifiable thing that has a fair market value of more than \$10.00.
 - c. "Voluntarily transferred" means:
 - 1) The person or entity transferring the thing of value has the intention to voluntarily give it without compensation; and,
 - 2) The person transferring the gift is competent (in order to have intention); and,
 - 3) The person or entity receiving the gift is an eligible recipient (e.g., some entities have prohibitions against employees accepting gifts); and,
 - 4) The thing of value is an existing identifiable thing (e.g., a promise to give something in the future is not a gift); and,
 - 5) The thing of value is actually transferred.
3. **Voluntary Payments, Prepayments or Repayments** -- The voluntary choice of a member or the member's family or significant others to pay an amount to Medicaid to maintain Medicaid eligibility, prepay a Medicaid deductible, reduce potential claim in an estate. The payment is made to the state Medicaid program, which cannot accept more than what Medicaid has paid for that individual.

Procedures

- A. For purchase of enhanced services, CMOs and their providers may accept payment for enhanced services only if all of the following are documented in the member's case record:
 - 1. That the payment is "pay the difference" in order to receive "added value" for either:
 - a. A service or item that is not included in the Family Care benefit and, for Medicaid-eligible members, not covered by Medicaid, or
 - b. An additional service or item that is included in the Family Care benefit but that is not necessary to achieve the member's outcomes as documented in the ISP/MCP.
 - 2. That the CMO has assured that the purchase is a voluntary, informed choice, both initially and whenever there are significant changes in a member's individualized service plan or payments, by:
 - a. Arranging for an individual or entity that is independent of the CMO to provide counseling to the member or the member's family or significant others regarding voluntary purchases, including that the member may revoke the consent for voluntary purchase at any time, and
 - b. Maintaining in the member's case record written confirmation from the independent entity or individual providing counseling that the member and/or family received such counseling regarding payment for enhanced services.
- B. A gift may be accepted by CMOs and their providers only if there is documentation in the member's case record that the CMO has assured that the gift was a voluntary, informed choice by:
 - 1. Arranging for an individual or entity that is independent of the CMO to provide counseling to the member or the member's family or significant others regarding voluntary gifts, including that the gift may be considered divestment of an asset and could lead to loss of Medicaid entitlement, and
 - 2. Maintaining in the member's case record written confirmation from the independent entity or individual providing counseling that the member and/or family received such counseling regarding voluntary gifts.
- C. The CMO shall refer to economic support a member or the member's family or significant others who wish to make voluntary payments to Medicaid to maintain Medicaid eligibility, prepay a Medicaid deductible, or reduce potential claim in an estate.
- D. The CMO shall assure that any entity or individual that has provided counseling to members and their families about purchasing enhanced services or making contributions and has documented such counseling for the CMO has received training and understands:

1. The member-centered planning process for identifying and addressing all of the long term care needs and outcomes of members, and
 2. The types of situations when it might be appropriate for enrollees or families to make a payment; and
 3. How to determine whether the CMO is responsible for providing, without any payment, the services for which payment is sought; and
 4. Techniques for providing unbiased guidance to an enrollee or family on whether it is in their interests to make a payment, and
 5. The limits upon an enrollee's ability to make gifts, including rules of divestment and estate recovery, and
 6. Member's option to make a voluntary repayment to the Medicaid program, according to procedures identified in the Medicaid Eligibility Handbook, appendix 21 – Estate Recovery Program.
- E. The CMO shall report all payments received for enhanced services or as gifts to the Local Long Term Care Council and the CMO Governing Board, and to the Department as part of the CMO quarterly financial report.